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BOOK REVIEWS

Law and Religion in Multicultural Societies

EDITED BY R MEHDI, H PETERSEN, ER SAND AND GR WOODMAN

DJØF Publishing, Copenhagen, 2008, 246 pp (paperback €32.00, £26.00 + VAT) ISBN: 978-87-574-1843-9

This collection of 11 essays comes from a series of lectures given at the University of Copenhagen in the autumn of 2006. The focus is on how societies deal with multiculturalism, religious pluralism and ‘the traditional religious and judicial practices’ of immigrants (p 15). The countries covered include Britain, Canada, India, Morocco, Denmark and Pakistan, as well as the European Union. The book will be of interest not only to lawyers but also to those involved in the sociology of religion and socio-legal studies.

The book is divided into four main parts, with two free-standing chapters at each end. In chapter one, Gordon Woodman explores the controversy of whether the only ‘true’ law is the law made and enforced by the modern state. Working from a theoretical basis, he exposes and explores different models and degrees of legal pluralism. For example, the possible outcomes are unification, continuing conflict, agglomeration and integration. He does not favour one model over the others but simply explores the different possibilities. He concludes that ‘[c]ultural relativism is dominant and the most prominent objective is likely to be the avoidance of conflict between cultures’ (pp 40–41). Likewise, there is a danger in believing in absolute values, such as the universalism of human rights.

The first part of the book consists of studies of multiculturalism in the UK. In chapter two, Werner Menski questions the Eurocentric domination of legal positivism. Through a study of marriage and family law he argues that ethnic minorities have changed their practices through years of settlement in Britain and have adapted to English law but have not abandoned their own practices altogether. Of personal law systems, he says that European states are still unwilling to accept them but that some accommodation is necessary in order to avoid injustices. He argues that English law has been more willing to accommodate Jews and Sikhs rather than Muslims. In any case, there is still a debate about the extent of the provision of faith-based mediation, as shown by the reactions to the Archbishop of Canterbury’s lecture in February 2008 (published in this *Journal* at (2008) 10 Ecc LJ 262–282). In the following chapter, Prakash Shah discusses the relationship of religion and law as an aspect of legal pluralism in Britain. He goes through legal provisions of English law and suggests that ‘the official legal sphere in Britain

provides an increasing space for religion, and this is particularly connected to Muslim struggles for recognition within the context of official multiculturalism' (p 79).

The second part covers Canada, India and the European Union. In chapter four, Sherene Razack turns to the government's ban of faith-based arbitration in Ontario, Canada, prompted by the fear that sharia law would be used against vulnerable Muslim women. She says that there is a risk of framing the debate in terms of women's rights versus multiculturalism or 'enlightened Western feminists versus imperilled Muslim women' (p 93) and that it might have been possible to secure more safeguards for women had they wished to use faith-based arbitration. In the end, Muslim women may still be able to use Islamic principles informally or turn to common law. Razack does not propose any particular solution but her essay is particularly useful in highlighting the terms of the debate. In chapter five, Erik Reenberg Sand surveys the codification of personal laws in India and how the modern Indian state regulates religion. Sand appears to be quite cautious of allowing ethnic minorities the right to practise their own personal laws, as he sees the return to a multicultural society as a danger for our 'time-honoured individual rights' (p 109). Finally, Lisbet Christoffersen's chapter six differs from the previous ones in that she considers the role of religion in various areas of the European Union. Her starting point is that the separation of Church and state is now a common norm across Europe, despite a newly found dialogue between the EU and religions. The multiculturalism issue arises in the discussion of cultural diversity and personal laws where, Christoffersen argues, this is not an option in the European sphere, following the *Refah Partisi* case decided by the European Court of Human Rights in 2003.¹ She notes that religion 'is seen not as part of any sort of Union-idea, but rather as relevant to the establishment of a community, or as covering not only a labour market, but all aspects of the practical political collaboration' (p 122). She concludes that the EU has had to relate to the religious identities of its citizens through a policy of non-discrimination and equal treatment, 'on the basis of their citizenship, not their religious identity' (p 129).

In the third part of the book, Lawrence Rosen (chapter seven) and Marie-Claire Foblets (chapter eight) both deal with Morocco's new Family Code, introduced in 2004 by the King. Rosen considers changes in marriage, divorce and custody arrangements. He points out that, despite changes on 'paper', what matters is the practical implementation of the Code. In the end, its implementation will depend on judicial discretion, changes from 'the bottom up' rather than imposed by the King through the Code, non-'legal'

1 *Refah Partisi (The Welfare Party) and others v Turkey* (2003) ECHR, Applications 41340/98-41342/98-41343/98-41344/98.

networks, and the attitude of those challenging the King, such as a number of Islamists. Foblets deals with the impact of the Code on Moroccans residing abroad but argues that there is little implication because of the general preference for the law of the country of residence. She also says that the Code is not as innovative as it is made out to be and is in continuity with the previous 1957 Code. Foblets is quite critical at times because the Code's implementation will depend on judicial interpretation; however, perhaps a little more information on how the Code has been interpreted and implemented so far would have been useful.

The final part deals with Pakistani Muslims. In chapter nine, M Azam Chaudhary considers the intricate relationship between official and customary law in Pakistan. He argues that customary practices dominate Pakistani Punjab legal culture and that there is legal pluralism in Pakistan. For example, folk Islamic justice is dispensed by a number of institutions, 'like shrines, saints, mullahs and mosques' (p 185), and there is also a customary system of justice (*panchayat*). Moreover, taking the example of police stations and courts as 'comparable to market places' (p 191), he argues that justice is relative and depends on the status and position of disputants in society. Finally, Rubya Mehdi in chapter ten considers how Muslim Pakistanis in Europe (especially in Denmark), use supernatural means to achieve justice, including magic and *jinn*, recitation of the Quran as a magic device, and charms. These practices are often seen as being used by the disadvantaged members of society in Europe and Mehdi points out that they sometimes reflect the culture of the society of origin.

Finally, in chapter eleven, Hanne Petersen discusses the place of religious values in secular places through an exploration of European and contemporary African paintings. This chapter stands apart from the others, and I was unsure how it related to the book as a whole.

In conclusion this is a very interesting collection of essays. A contemporary issue was clearly tackled, although I found that the quality of the essays was uneven. This may be due to the nature of the study and the fact that multiculturalism has to be treated through different themes and countries. In addition, there are quite a few spelling mistakes dotted throughout the book that could have been avoided. Nevertheless this will be a valuable study for many. It may not be a straightforward thing to say that there is only 'official' law when confronted with formal and informal accommodation of cultural and religious practices. To this reader, the strength of the book lies in the presentation of difficult and controversial issues in a challenging way.

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